

## COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name: WHITALL RAYMOND R  
(Last) (First) (Middle Initial)

Prisoner Number: G 43090

Institutional Address: P. O. Box 1050  
SOLEDAD CA 93960-1050

**FILED**  
 FEB 19 2020  
 SUSAN Y. SOONG  
 CLERK, U.S. DISTRICT COURT  
 NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

RAYMOND WHITALL  
(Enter your full name.)

**CV 20 1259**

vs.

Case No. \_\_\_\_\_  
(Provided by the clerk upon filing)

California Department of Corrections and  
Rehabilitation; State of California; Merica  
Armstrong; Hung Le; Vanessa Soria (cont'd p. 4)  
(Enter the full name(s) of the defendant(s) in this action.)

**COMPLAINT UNDER THE**  
**AMERICANS WITH DISABILITIES ACT**  
 42 U.S.C. § 12132; Rehabilitation Act, 29 U.S.C. § 794;  
 42 U.S.C. § 1983

**I. Exhaustion of Administrative Remedies.**

Note: You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

A. Place of present confinement Salinas Valley State Prison

B. Is there a grievance procedure in this institution? YES ☒ NO ☐

C. If so, did you present the facts in your complaint for review through the grievance procedure? YES ☒ NO ☐

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: Not Available

2. First formal level: SVSP-SC-170000714, 11-28-17, Intervention; SVSP-HC-170000429, 1-8-18, No Intervention; SVSP-SC-180000252, 4-2-18, No Further Intervention; SVSP-HC-18001365, 6-8-18, No Intervention; SVSP-HC-19000539, 7-3-19, No Intervention.
3. Second formal level: SVSP-SC-170000814, 3-8-18, No Intervention; SVSP-HC-170000429, 4-3-18, No Intervention; SVSP-SC-180000252, 7-9-18, No Intervention; SVSP-HC-18001365, 9-7-18, No Intervention; SVSP-HC-19000539, 9-8-19, No Intervention.
4. Third formal level: None Available: Under the new Health Care Appeal system there are two levels of review: the Institutional level and the Headquarters level.

E. Is the last level to which you appealed the highest level of appeal available to you?

YES ☒ NO ☐

F. If you did not present your claim for review through the grievance procedure, explain why.

Not Applicable

## II. Parties.

A. Write your name and present address. Do the same for additional plaintiffs, if any.

Raymond Whitall, 643040 A3-116, P.O. Box 1050, Sealed CA 93960.  
(Continued on Attached Complaint, Section II. Parties, p. 1.)

B. For each defendant, provide full name, official position and place of employment.

California Department of Corrections and Rehabilitation, 1515 S. Street,  
Sacramento CA 95811; State of California. (Continued on Attached  
Complaint, Section II. Parties, p. 2.)

1 **III. Statement of Claim.**

2 State briefly the facts of your case. Be sure to describe how each defendant is involved  
 3 and to include dates, when possible. Do not give any legal arguments or cite any cases or  
 4 statutes. If you have more than one claim, each claim should be set forth in a separate  
 5 numbered paragraph.

6 *Please see Attached complaint.*

16 **IV. Relief.**

17 Your complaint must include a request for specific relief. State briefly exactly what you  
 18 want the court to do for you. Do not make legal arguments and do not cite any cases or  
 19 statutes.

20 *Please see Attached complaint.*

24 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

25 Executed on: 2/4/2020  
 Date

*Raymond W. Smith*  
 Signature of Plaintiff

1 Complaint By A Prisoner Under The Civil Rights Act, 42 U.S.C. § 1983

2 Names of defendants (continued from caption, p. 1)

3 Jean Parker; Antony Kingetue; Roselle Bidalonade, Milagro Carino, Cesario

4 Carino, Evelyn Vicente.

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Raymond Whittall  
 SVSP G43090  
 P.O. Box 1050  
 Soledad CA 93960  
 Plaintiff, pro se

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

Raymond Richard Whittall,  
 Plaintiff

v

California Department of  
 Corrections and Rehabilitation,  
 et al,  
 Defendants

Case No.

Complaint Under the Americans with  
 Disabilities Act, 42 U.S.C. §§ 12101 et seq.,  
 and 12132; the Rehabilitation Act, 29 U.S.C.  
 § 794; and the Civil Rights Act, 42 U.S.C.  
 § 1983

I. Exhaustion of Administrative Remedies

Plaintiff has exhausted all administrative remedies for all  
 claims presented herein.

II. Parties

1. Plaintiff, Raymond Whittall, is a state prisoner in the custody  
 of the California Department of Corrections and Rehabilitation (CDCR)  
 at Salinas Valley State Prison (SVSP) at Soledad, California.

2. The CDCR is a public agency of the State of California.

3. Monica Armstrong was at all times mentioned herein an  
 employee of the CDCR in the capacity of Psychiatric Technician  
 (PT) at SVSP.

4. Nang Le was at all times mentioned herein an employee of Mr.

Whittall v. CDCR; Complaint

1 Raymond Whittall  
2 SVSP G43090  
3 P.O. Box 1050  
4 Soledad CA 93960  
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Plaintiff, pro se

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Raymond Richard Whittall,  
Plaintiff

v

California Department of  
Corrections and Rehabilitation,  
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Defendants

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(PT) at SVSP.

4. Hang Le was at all times mentioned herein an employee of the

Whittall v. CDCR; Complaint

1 CDCR in the capacity of Psychiatric Technician (PT) at SVSP.

2 5. Vanessa Soria was at all times mentioned herein an employee of the  
3 CDCR in the capacity of Psychiatric Technician (PT) at SVSP.

4 6. Joan Parker was at all times mentioned herein an employee of the CDCR  
5 in the capacity of Psychiatric Technician (PT) at SVSP.

6 7. Antony Kngethe was at all times mentioned herein an employee  
7 of the CDCR in the capacity of Registered Nurse (RN) at SVSP.

8 8. Roselle Balderado was at all times mentioned herein an employee  
9 of the CDCR in the capacity of Registered Nurse (RN) at SVSP.

10 9. Milagros Carino was at all times mentioned herein an employee of  
11 the CDCR in the capacity of Psychiatric Technician (PT) at SVSP.

12 10. Cesario Carino was at all times mentioned herein an employee  
13 of the CDCR in the capacity of Psychiatric Technician (PT) at SVSP.

14 11. Evelyn Vicente was at all times mentioned herein an employee of  
15 the CDCR in the capacity of Psychiatric Technician (PT) at SVSP.

16 12. All persons named as defendants are sued in their individual  
17 capacities, and at their business address of California Department of  
18 Corrections and Rehabilitation, 1515 L Street, Sacramento CA 95814.

19 III. Statement of Claim

20 A. Facts:

21 1. Plaintiff is an individual with a disability pursuant to 42 U.S.C.  
22 § 12102(1);

23 A) Plaintiff was diagnosed by CDCR staff with a hearing  
24 impairment requiring the constant use of hearing aids at around  
25 August, 2013;

26 B) Plaintiff's hearing impairment has been continuous



1 and uninterrupted from August, 2013 and through to the present;

2 c) The CDCR provided plaintiff with hearing aids in around  
3 August, 2013;

4 2. Plaintiff's hearing impairment creates an inability to hear and  
5 effectively communicate without properly functioning hearing aids. As a  
6 result plaintiff is unable to fully participate in and derive the benefit of  
7 programs, services, activities provided by the CDCR;

8 3. With properly functioning hearing aids plaintiff is able to pro-  
9 perly and effectively hear and communicate, and to fully participate in  
10 and derive the benefit of programs, services, activities provided by the CDCR;

11 4. The CDCR considers plaintiff as having a qualified disability of  
12 Hearing Impaired and has him enrolled in their Disability Placement  
13 Program since about August, 2013, with a "DM" designation which signi-  
14 fies plaintiff is hearing impaired. Defendants, each and every one, at  
15 all times mentioned herein, were aware of plaintiff's hearing im-  
16 pairment;

17 5. For several periods of time defendant's deprived plaintiff of  
18 the use of functioning hearing aids as explained below;

19 6. For several periods of time plaintiff was unable to partici-  
20 pate in programs, services, activities of CDCR as other, non-disabled,  
21 prisoners could because he did not have functioning hearing aids;

22 7. Except for the fact that plaintiff was deprived of func-  
23 tioning hearing aids as explained below, plaintiff would have  
24 been able to participate in the programs, activities, and services  
25 of the CDCR as do other, non-disabled, prisoners;

26

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8. Only because of his hearing impairment coupled with his deprivation of functioning hearing aids Plaintiff was unable to participate in and benefit from the programs, activities, services of CDCR as other, non-disabled, prisoners could, and as explained below;

9. Hearing Aids Batteries Deprivation:

On September 13, 2017, while in Administrative Segregation in Building Z-9, Plaintiff's hearing aid batteries died rendering Plaintiff's hearing aids inoperable.

On September 13, 2017, I attended a committee meeting with approximately ten staff present. I announced to the assembly that my hearing aid batteries were dead and my hearing aids were not working. This was a mental health committee and defendant Monica Armstrong, as a Psychiatric Technician, was present during this meeting. I informed defendant Armstrong of my need for replacement batteries. Several hours later, during the medication distribution when defendant Armstrong was at my cell she did not have and did not provide to me the batteries I earlier requested and needed. On September 20, 2017, my mental health clinician informed defendant Armstrong that I needed replacement batteries for my hearing aids. Several hours later, during the medication distribution when defendant Armstrong was at my cell she again failed to provide to me the batteries requested by my clinician and which I had needed since September 13, 2017. According to Unit Supervisor R. Ries, defendant Armstrong claimed ever having been informed of my need for batteries.

1 On September 13, 2017, during medication distribution, I  
2 asked defendant Jam Parker, PT, to provide me with replacement  
3 hearing aid batteries as mine were dead. Defendant Parker failed  
4 to provide me with any batteries. I next saw defendant Parker  
5 on September 17, 2017, during medication distribution, and she  
6 still did not provide me with the batteries I had requested  
7 on September 13, 2017, and which I still needed.

8 On September 14, 2017, during his daily welfare check, I asked  
9 defendant Milagres Carino, PT, to provide me with replacement  
10 hearing aid batteries. I believe I explained to defendant Milagres  
11 Carino that it was my second day without batteries for my  
12 hearing aids. Defendant Milagres Carino failed to provide me  
13 with any batteries even hours later when he was at my cell  
14 during medication distribution.

15 On September 15, 2017, defendant Vanessa Soria, PT, conducted  
16 a morning welfare check on me, at which time I asked defen-  
17 dant Soria to provide me with hearing aid batteries and explaining  
18 to her that I had been without batteries for three days. When  
19 defendant Soria returned to my cell several hours later during  
20 medication distribution she failed to provide me with the batter-  
21 ies I had earlier requested. On September 18, 2017, during her  
22 morning welfare check of me, defendant Soria still did not pro-  
23 vide me with the replacement batteries I had requested on  
24 September 15, 2017. During the September 18, 2017, welfare check  
25 I renewed my request for the batteries. Defendant Soria never  
26 provided me with the batteries I needed and requested.

1 On September 16, 2017, during medication distribution, I asked  
 2 defendant Hong Le, PT, to provide me with replacement hearing aid  
 3 batteries, informing her that mine were dead. Defendant Le failed  
 4 to provide me with batteries. On September 18, 2017, when I next  
 5 saw defendant Le she still did not have and still failed to provide  
 6 me with the batteries I needed. I renewed my request to her for  
 7 hearing aid batteries. Defendant Le did not return to my cell that  
 8 evening to provide me with batteries. On September 19, 2017, I  
 9 encountered defendant Le during medication distribution and she  
 10 still failed to provide me with the batteries I had requested and  
 11 still needed. I renewed my request to PT Le for batteries, and I  
 12 believe it was during this encounter with defendant Le when  
 13 I pointed out to her that the prison clinic (CRC/TTA) is  
 14 right across the street and about a two-minute walk away  
 15 and that after all these days it seemed that someone could  
 16 have made that walk to get me batteries. On September  
 17 19, 2017, defendant Le again appeared at my cell for medi-  
 18 cation distribution, and she again failed to provide me with  
 19 the batteries I had requested and still needed.

20 On September 16, 2017, during her welfare check of me, I  
 21 asked defendant Evelyn Vicente to provide me with replace-  
 22 ment hearing aid batteries, telling her that mine were dead.  
 23 Defendant Vicente failed to provide me with hearing aid batteries  
 24 on that date. On September 17, 2017, Defendant Vicente, PT, again  
 25 conducted the daily welfare check on me, and she again failed  
 26 to provide me with the batteries I had requested and needed.

1 - This sentence is an error and should be disregarded

1 Although I believe I did not renew my request with defen-  
 2 dant Norrie during this September 17 encounter, I did tell  
 3 her the clinic is right across the street and that some-  
 4 one should be able to walk over there and get the bat-  
 5 teries I need. Despite my suggestion, defendant Norrie did  
 6 not return with and failed to provide me with the batteries  
 7 I needed. On September 20, 2017, defendant Norrie again  
 8 conducted the welfare check on me and again she failed to  
 9 provide me with the batteries I had previously requested  
 10 and still needed.

11 On September 19, 2017, defendant Cesario Carrino conducted  
 12 the daily welfare check on me. During this encounter I told  
 13 defendant Cesario Carrino that my hearing aid batteries had  
 14 died and that I had been without the use of my hearing  
 15 aids for a week. I requested that he get me replacement  
 16 batteries. Defendant Cesario Carrino did not return with batteries  
 17 for me. Defendant Cesario Carrino failed to provide me with the  
 18 batteries I needed and had requested.

19 On September 19, 2017, I was taken to the prison's emergency  
 20 room (TTA). There, I encountered defendant Rosette Baldonado, RN,  
 21 who was preparing me for transport to the local community hospi-  
 22 tal. During this process defendant Baldonado inquired of me about  
 23 my possessing my hearing aids. I informed her that my batteries  
 24 had died a week ago and I am not using my hearing aids.  
 25 Defendant Baldonado informed me that she would supply me with  
 26 batteries and she would have them waiting for me when I return

1 from the hospital. When I returned from the hospital  
 2 several hours later there were no batteries waiting for me.  
 3 Defendant Baldonado failed to provide me with the batteries  
 4 I needed.

5 On September 19, 2017, I returned to the TTA following  
 6 my trip to the local community hospital. At the TTA I  
 7 encountered defendant Antony Kangethe, RN, who processed me  
 8 in to the prison pursuant to procedure. At this time I asked  
 9 defendant Kangethe for the batteries defendant Baldonado  
 10 said she would have waiting for me. Defendant Kangethe said  
 11 he is unaware of any such batteries. I then told him that  
 12 I had been without batteries for a week, and I asked him  
 13 to provide me with hearing aid batteries. Defendant Kangethe  
 14 seemed to ignore my explanation and request. Defendant  
 15 Kangethe failed to provide me with the batteries I requested  
 16 and needed.

17 In all, between September 13 and September 20, 2017, inclusive,  
 18 I was forced by the CDCR and its staff - the defendants - to try  
 19 to function in an administrative segregation (ad seg) setting for  
 20 eight days in a state of inability to effectively hear and  
 21 comprehend that which was happening which affected me. Due  
 22 to the acts and omissions of the defendants I was largely unable  
 23 to effectively function in that ad seg setting because I did  
 24 not have functioning hearing aids.

25 During this period of time I was unable, periodically, to  
 26 comprehend when activity concerning me was occurring within

1 this Adsej setting. These activities included obtaining needed  
 2 supplies, attending out-of-cell recreation, obtaining clothing and,  
 3 of course, unknown activities of which I am still not, or may  
 4 not be aware.

5 During this period of time I was forced to participate in  
 6 a committee meeting without the assistance of my hearing aids,  
 7 a medically-necessary assistive device.

8 During this period of time I was forced to submit to a  
 9 polygraph examination without the benefit and assistance  
 10 of my hearing aids.

11 During this committee meeting and polygraph examination  
 12 I was emotionally distressed over my worry that I would  
 13 miss something of vital importance, or misinterpret something  
 14 said to me.

15 On one occasion during this eight-day period without  
 16 the use of my hearing aids I was criticized and yelled at  
 17 by a guard for yelling at one of the PTs. In fact, I was not  
 18 yelling at anybody, I was merely talking loud and I believe  
 19 I was doing so because I could not even hear myself and  
 20 the volume of my voice.

21 On September 19, 2017, I filed a grievance over the deprivation  
 22 of hearing aid batteries. This grievance (602) was received by the  
 23 Health Care Grievance Office on the morning of September 21, 2017.  
 24 Well before noon on September 21, 2017, two guards and a  
 25 person I presumed to be a nurse appeared at my cell and  
 26 the nurse asked me what size hearing aid batteries I need.



1 I told her I need size B batteries. She and the guards  
 2 departed and just minutes later the nurse was back at my cell  
 3 door and she provided me with two fresh batteries for my hearing  
 4 aids.

5 At around noon on September 21, 2017, RN Llamas, the 602  
 6 triage nurse, appeared at my cell door inquiring as to my receipt  
 7 of batteries. After some discussion, RN Llamas (not a defendant)  
 8 encouraged me to withdraw my 602. I declined.

9 My 602 was eventually investigated as a staff complaint.  
 10 During the investigation non-defendant R. Ries, Unit Supervisor,  
 11 interviewed every PT on duty in 2-9 between September 13  
 12 and September 20, 2017, according to what R. Ries told me.  
 13 She also told me that every PT denied having been told that  
 14 I needed batteries for my hearing aids.

#### 15 10. Hearing Aids Malfunction #1:

16 On December 11, 2017, my left hearing aid malfunctioned to the  
 17 extent that it would not produce any sound into my ear. I submitted  
 18 a Health Care Services Request Form (7362) on December 11, 2017,  
 19 and I was seen relative to that 7362 on December 12, 2017,  
 20 by LVN Christine Serier.<sup>1</sup>

21 During this examination I informed LVN Serier of my malfunc-  
 22 tioning hearing aid. She told me she will refer the matter to the  
 23 doctor. I asked LVN Serier if I could be provided with a  
 24 temporary replacement hearing aid. She advised me there is no  
 25 such a thing.

26 By January 17, 2018, when I had yet to be seen by a doctor

<sup>1</sup>-LVN=Licensed Vocational Nurse



1 for this issue I submitted another 7362. For this 7362 I was  
 2 seen on January 18, 2018, by LNU Miliakere Matituku (A non-defen-  
 3 dant) and also by RN One (A non-defendant) who advised me  
 4 A referral to audiology would be made. I explained to both  
 5 the LNU and the RN that I am physically attending my mental  
 6 health therapy groups, but that I am unable to participate in  
 7 the group discussions because I am not able to hear and com-  
 8 prehend the discussion taking place around me for lack of the  
 9 hearing aid. My left ear is where I am afflicted with  
 10 severe hearing loss as opposed to only moderate hearing loss in my  
 11 right ear. Nurse One advised me to advise my clinician of  
 12 my inability to participate. I requested of these nurses a  
 13 temporary replacement hearing aid and RN One said I can  
 14 not have one. I took this to mean I could not have one  
 15 because there is no such a thing, as I was previously told by  
 16 LNU Sevier (A non-defendant).

17 I remained without a fully functioning pair of hearing  
 18 aids from December 11, 2017, through February 22, 2018,  
 19 finally being issued two new hearing aids on February 23,  
 20 2018.

21 For this 74-day period CDCR staff was unable to provide  
 22 temporary replacement hearing aids to me because, I am informed  
 23 by health care staff, the CDCR has no such a thing.

24 For this 74-day period I continued to attend my  
 25 mental health therapy groups. Despite attending my groups  
 26 I was unable to effectively participate in the group discussions.

1 During this time I was receiving extensive mental health  
 2 treatment at the Extended Outpatient Program level of  
 3 care, the CDCR's highest level of mental health care which  
 4 entails multiple mental health therapy groups on a daily  
 5 basis and which resulted from a mental health crisis I  
 6 had previously experienced.

7 On multiple occasions I advised the group facilitators (RT)  
 8 of my hearing aid problem, and told them I would do my best  
 9 to participate. I was unable to participate effectively because  
 10 I could not keep up with the conversations. After a while I  
 11 ceased trying to participate as it became too frustrating.

12 On January 30, 2018, my primary mental health clinician and  
 13 non-defendant Beth Fischgrund, Ph.D. (PC) interviewed me and  
 14 advised me she had spent an hour on the phone with health  
 15 care staff to determine the cause of the delay in getting  
 16 my hearing aid fixed. She advised me she was told by  
 17 someone associated with the "Institutional Utilization  
 18 Management Committee" that the audiologist comes to SVSP  
 19 only once a month. By that schedule it seems I should have  
 20 been seen by the Audiologist in January since I was examined  
 21 first in the middle of December.

22 During this period of time, and due to the fact that I  
 23 was not provided with functioning hearing aids which prevented  
 24 me from effectively and fully participating in my mental health  
 25 therapy groups, I was frustrated at not being able to  
 26 participate, and I was embarrassed at my inability to respond

1 to group participants when addressed by them.

2 During this period of time the CDCR and its employers  
3 made no effort to provide me with the medically-necessary  
4 assistive devices I required to participate in the programs, activities,  
5 services as other, non-disabled, prisoners could. I was unable, during  
6 this period of time, to participate in these programs, services, activities  
7 of the CDCR, and unable to benefit from these programs, activities,  
8 services of the CDCR as other, non-disabled, prisoners could  
9 because the CDCR did not provide me with the medically-  
10 necessary assistive devices I required.

11 11. Hearing Aids Malfunction #2:

12 On About April 10, 2018, my left hearing aid broke into two  
13 pieces, rendering it unusable. I submitted a 7362 and I was soon  
14 examined and referred to the audiologist. During the examina-  
15 tion on April 17, 2018, conducted by LVN Naituku, I requested  
16 of LVN Naituku a replacement temporary hearing aid. I told  
17 her of my previous experience of difficulty participating in  
18 my mental health groups without two functioning hearing aids.  
19 LVN Naituku advised me there are no temporary hearing aids  
20 and that I would need to await the appointment with the  
21 audiologist.

22 On About June 14, 2018, the audiologist provided me with a  
23 new left hearing of a different make and model than the broken  
24 hearing aid. He provided this hearing right out of box, without  
25 a hearing test, and without the need to perform any adjustment  
26 to the hearing aid; simply, from the package into my ear.

1 On About July 11, 2018, the audiologist provided me with a  
 2 right hearing aid of a different make and model than my  
 3 then-present right hearing aid. Again, this hearing aid was  
 4 provided to me straight out of the box to my ear without  
 5 testing or adjustment. Apparently this audiologist, who was  
 6 a different audiologist from the previously-contracted audi-  
 7 ologist who provided my previous set of hearing aids, had no  
 8 need to conduct any sort of testing of me or adjustment of  
 9 the hearing aids to fit my particular hearing impairment  
 10 needs as he never examined me, tested me, nor made any  
 11 adjustments to the devices he provided to me and which  
 12 work just fine for me.

13 Because of this, I have decided that the CDCR could  
 14 have had on hand and available to me a temporary (or even  
 15 permanent) replacement hearing aid to provide to me. If no  
 16 pre-testing of me, nor pre-adjustment of the hearing aids  
 17 given to me was necessary then the policies, practices, and  
 18 procedures of the CDCR to require me to wait to see  
 19 the contracted audiologist before receiving a replacement  
 20 hearing aid would be misguided.

21 Between April 10 and June 14, 2018, I was again unable to  
 22 fully participate in my EBP mental health therapy groups to  
 23 the extent that I could not derive the full benefit of  
 24 this therapy as could other, non-disabled, prisoners. During  
 25 this time I was again frustrated and embarrassed over my  
 26 inability to participate in my groups.

1 12. During my hearing and malfunction periods I was unable  
 2 to fully participate in the programs, services, activities of CDCR  
 3 including library, yard activity (recreation), and dayroom activity  
 4 (recreation and showers) as could other, non-disabled, prisoners.

5 B. Injuries:

6 Plaintiff suffered the following injuries as the direct result of  
 7 the acts and omissions of defendants:

8 1. Violation of his rights and protections under the United States  
 9 Constitution's Eighth and Fourteenth Amendments;

10 2. Violation of his rights and protections under the Americans  
 11 with Disabilities Act, as contained within 42 U.S.C. §§ 12101 et seq.;

12 3. Violation of his rights and protections under the Rehabilitation  
 13 Act, as contained within 29 U.S.C. § 794;

14 4. Emotional and physical distress;

15 5. Mental health impairment.

16 C. Contentions:

17 1. The CDCR's policies, procedures, and practices prevented plaintiff  
 18 from fully participating in and deriving the benefit of CDCR programs,  
 19 services, activities, as other, non-disabled, prisoners could;

20 2. The acts and omissions of defendants prevented plaintiff from  
 21 fully participating in and deriving the benefit of CDCR programs,  
 22 services, activities, as other, non-disabled, prisoners could;

23 3. But for the CDCR's policies, procedures, and practices, and the  
 24 acts and omissions of the defendants, plaintiff would have been  
 25 able to fully participate in and derive the benefit of CDCR pro-  
 26 grams, services, activities as do other, non-disabled, prisoners;

1 4. Defendants Armstrong, Le, Soria, Parker, Milagres Carino, Cesario  
 2 Carino, Baldonado, Vicente, and Kangethe were deliberately indiffer-  
 3 ent to my need for hearing aid batteries and my inability to pro-  
 4 perly hear without them; as such, they inflicted cruel and  
 5 unusual punishment upon me in violation of the U.S. Constitution's  
 6 Eighth Amendment;

7 5. The Acts and omissions of defendants Armstrong, Le, Soria,  
 8 Parker, Milagres Carino, Cesario Carino, Baldonado, Vicente, Kangethe,  
 9 and the CDCR violated plaintiff's rights and protections under the  
 10 U.S. Constitution's Fourteenth Amendment, and/or the ADA, and the RA;

11 6. Defendants Armstrong, Le, Soria, Parker, Milagres Carino, Cesario  
 12 Carino, Baldonado, Vicente, and Kangethe were acting under color of  
 13 state law at all times mentioned herein;

14 7. Defendants, each and every one, at all times where they are  
 15 mentioned herein, created, fostered and allowed for the inappro-  
 16 priate, and cruel and unusual care, treatment, and punishment of  
 17 plaintiff;

18 8. The Acts, omissions, policies, procedures, and practices of  
 19 defendants, each and every one, contributed to and proximately  
 20 caused the injuries to plaintiff as delineated herein;

#### 21 IV. Prayer for Relief

22 Plaintiff requests this Court enter judgment against defen-  
 23 dants and grant the following:

- 24 1. Compensatory damages against the CDCR;
- 25 2. Compensatory damages against defendants Armstrong, Le, Soria,  
 26 Parker, Milagres Carino, Cesario Carino, Baldonado, Vicente, and Kangethe,

1 jointly and severally, in an amount to be determined, for violation  
 2 of plaintiffs U.S. Constitution Eighth Amendment rights and  
 3 protections;

4 3. Punitive damages against defendants Armstrong, Le, Serio,  
 5 Parker, Milagres Carino, Cesarino Carino, Baldonado, Vicente, and  
 6 Kangethe, jointly and severally, in an amount to be determined,  
 7 for violation of plaintiffs U.S. Constitution Eighth Amendment  
 8 rights and protections;

9 4. Compensatory damages against defendants Armstrong, Le,  
 10 Serio, Parker, Milagres Carino, Cesarino Carino, Baldonado, Vicente, and  
 11 Kangethe, jointly and severally, in an amount to be determined, for  
 12 violation of plaintiffs U.S. Constitution Fourteenth Amendment  
 13 rights and protections;

14 5. Punitive damages against defendants Armstrong, Le, Serio,  
 15 Parker, Milagres Carino, Cesarino Carino, Baldonado, Vicente and Kangethe,  
 16 jointly and severally, in an amount to be determined, for violation  
 17 of plaintiffs U.S. Constitution Fourteenth Amendment rights and  
 18 protections;

19 6. Compensatory damages against defendants Armstrong, Le, Serio,  
 20 Parker, Milagres Carino, Cesarino Carino, Baldonado, Vicente, and  
 21 Kangethe, jointly and severally, in an amount to be determined, for  
 22 the negligent and intentional infliction of emotional distress upon  
 23 plaintiff;

24 7. Punitive damages against defendants Armstrong, Le, Serio,  
 25 Parker, Milagres Carino, Cesarino Carino, Baldonado, Vicente, and  
 26 Kangethe, jointly and severally, in an amount to be determined, for



1 the negligent and intentional infliction of emotional distress upon  
2 plaintiff;

3 8. Any other relief deemed appropriate.  
4

5 I, Raymond Whitall, declare under penalty of perjury that the foregoing  
6 is true and correct except as to matters stated on information and belief,  
7 And as to those matters I believe them to also be true. Executed At  
8 Soladad Cal. Formia.

8 Respectfully Submitted,  
9

Executed On: February 4, 2020

10 Raymond Whitall

11 Raymond Whitall  
12 Plaintiff, pro se  
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